vent vice, protect the weak, maintain discipline, the commander is all-powerful on board his ship. It is only when he is unjust or tyrannical that he is powerless. The great majority of law-abiding passengers, and his employers, will give him their moral support, and aid him in the preservation of law and order. It is only the weak and vacillating commander who will tolerate any breach of law of which he has proof.

In the last paragraph of Captain Kennedy's article he repeats the question, "Why is gambling permitted?" and answers it—satisfactorily, no doubt, to himself—without taking the "moment's consideration" he recommends. "All Atlantic passenger steamers are furnished with a large supply of wines and liquors, which are not included in the price of passage. Men who gamble drink, and largely, too. The profits derived from the sale of these wines and liquors during the travelling—or, I may say, the gambling—season are so great that it is not to the interest of the steamship companies to abolish gambling," etc.

If Captain Kennedy had taken the "moment's consideration" which he recommends, he might, with his knowledge and experience of the expense of running Atlantic steamers, have surmised that the expensive space required for wines and liquors, smoking-room and bar, the wear and tear, breakage, waste, and attendance might possibly reduce the profits to such an extent as to put them beneath the consideration of the managers and directors of large corporations like steamship companies. If he were impartial and just to the managers and directors he has known, he would have said that some of them consider the bar a blot on their fine ships, and one they would willingly remove were it not that the habits of men who travel make it necessary to maintain it. The legitimate purpose for which the wines and liquors are carried is to supply the temperate with the quantity they are accustomed to take, and which it would be inconvenient for them to carry. The punishment the passenger incurs by exceeding the bounds of strict temperance is the immediate stoppage of his orders. I am happy to say that but few have, in my experience, incurred this punishment.

I sincerely hope that when Captain Kennedy again attempts to bring to public notice the abuses that, he imagines, exist on board Atlantic steamers, his assertions will at least be made with due regard to truth, with more liberality of spirit, and with more charitable judgment.

H. PARSELL, R. N. R.,
commander of the White Star steamer "Majestic."

II.

FRETTING ABOUT THE CONSTITUTION.

ONE who should attempt to make a list of those who, voluntarily and without hope of fee or reward, have assumed the duty of helping the President to "preserve, protect, and defend the Constitution of the United States," would find himself transcribing many eminent names. Hamilton, returning from the convention of 1787, is reported to have foreseen and to have remarked that everything depended upon the interpretation put upon the Constitution that had just been framed. Even then there were those who feared, as well as those who hoped. Beginning with that great objector, Jefferson, the inventor of the idea and the name of nullification, there has been an almost unbroken succession of statesmen and politicians who have been disquieted in their righteous minds lest the Republic should receive an injury by an infraction of the Constitution—as they understand it.

Far be it from us to deprecate or to belittle the conservative spirit which resists innovation and the assumption of new and—to the objector—dangerous powers, and thus affords the people an opportunity to consider deliberately whether or not they wish the extension of power to take place. Even pessimism is useful at times. But in by far the largest number of cases the anxiety of the temporary statesmen who flash upon Congress as constitutional lawyers, like *stellæ novæ*, lest the Constitution should be violated, is frivolous. It is stirred by trumpery causes; or it is based upon an illogical reading of the great instrument of our liberties; or the constitutional

view advanced reduces itself, by its consequences, to an absurdity. The only use of the objections which are included in this class is afterward to afford the student of political history an occasional quarter of an hour of amusement in his otherwise dry reading, when he stumbles upon one of these defunct controversies.

To illustrate: There is perhaps no more delicious bit of unconscious constitutional humor extant than the argument by Senator Jones, of Florida (whose misfortune every one deplores), to the effect that if General Garfield, the elected President of the United States (who, at the time the argument was made, was physically unable to discharge the duties laid upon him), were to yield his office to the Vice-President, and were afterward to recover from the disability, he would not have a right to resume the functions to which he was called; but that Mr. Arthur, the Vice-President, having succeeded to the duties of the office, having in turn been compelled by disability to relinquish those duties, and having subsequently recovered, would be capable, under the Constitution, of resuming the Presidential functions.

There are several recent instances of most unnecessary worry about the Constitution that deserve mention. As is well known, there are many honorable Senators and members of Congress who announce themselves as "friendly to silver," and who denounce their opponents as "enemies of silver" and as engaged in "a conspiracy to degrade silver." It is not worth while to inquire whether or not silver reciprocates the affection and appreciates the loyalty of these devoted champions; that is not the point. But it may be asserted that in more than twoscore and ten speeches made in Congress by the "advocates of silver" during the last half-dozen years, this argument may be found: it is unconstitutional for Congress to discriminate against silver in its coinage laws, because the two metals are linked together in the language of the Constitution. "Gold and silver coin," they say, in effect, "is the money of the Constitution, and you cannot divorce them without violating the spirit of the Constitution." What the Constitution does really say is that no State shall "make anything but gold and silver coin a tender in payment of debts." How this can be transformed into a requirement that the United States shall grant free coinage to both metals is a logical mystery. It is to the credit of those who do not believe that something can be made out of nothing by a mint die that they have never noticed or answered this argument. As well might one undertake to prove that the prohibition upon the States to issue letters of marque and reprisal does not lay upon Congress the duty of establishing a uniform system of piracy.

A few weeks ago the Supreme Court, to the surprise and consternation of the country, decided that, since intoxicating liquors are an article of commerce and of commerce between the States, any State law which forbids the sale in the original package of liquor brought from another State is unconstitutional, since the Constitution has lodged in Congress the exclusive right to regulate commerce between the States. That decision practically rendered nugatory all the laws of all the States, whether prohibitory, local-option, or license in restraint of the liquor traffic; and it led to an early consideration by the Senate of the United States of a bill intended to concede to the States the right which they had always exercised without serious question.

Not to take note of a very few exceptions, the condition of things established by the decision was universally deemed intolerable. The conceded right of Congress to regulate the inter-State commerce in liquor was manifestly a right that could not be exercised, since no law having uniform application throughout the country would be either acceptable or equitable, considering the diversity of public sentiment in the several States on this subject. But when a practical measure, intended to remit the regulation of the traffic to the States, came under discussion, the chronic anxiety lest the Constitution should be infringed was manifested in some amusing forms.

"Mr. President," said Mr. Call, of Florida, "the question would occur again, Are intoxicating spirits exempted? Was it intended that they should be exempted

by the makers of the Constitution from the subjects of commerce?" "Well, no; and probably Alexander Hamilton never supposed that the clause relating to commerce between the States would be held to have any application to the question of free railroad passes or the 'long and short haul.'"

Mr. Morgan, of Alabama, contributed to the debate another choice bit of the same sort, in offering opposition to the theory that the right of regulation might be conceded to the States as a necessary police power. "They call them police laws, and police regulations. I do not find these phrases anywhere in the Constitution—'police laws' or 'police regulations'!" Certainly not.

Mr. Coke, of Texas, urged that "a strict adherence to the Constitution as it is, and an amendment of it in the mode provided by itself when an amendment is needed, is our hope for the perpetuation of our government, with its attendant blessings." Mr. Eustis, of Louisiana, maintained that the proposed enactment was "simply a declaratory law by Congress—a law to interpret the Constitution of the United States differently from the interpretation which it has received from the Supreme Court of the United States—a law which, by its declaration and interpretation is a nullification, in my judgment, of a provision of the Constitution." Both these gentlemen were in the Confederate army.

Expressions similar to these might be multiplied, but it is unnecessary. The fact is, as every candid person will admit, that there is not a State in the Union which does not desire the right to regulate, by legislation of some sort, the traffic in intoxicating liquor. By the decision of the Supreme Court there is one form of the traffic which no State may prohibit or regulate, and unrestrained liberty therein may render quite useless all regulating laws that are permissible. Yet we find Senators of the United States solemnly anxious lest an injury may be done to the Constitution by the remission to the States of a right which Congress does not want and cannot exercise, and which the States do want—a right which the States have used for forty years; which neither Congress nor the people suspected to be reserved exclusively to Congress until the Supreme Court discovered and announced the fact.

One extra-Congressional instance, briefly referred to, shall end this present list. For some unexplained reason, certain busy-bodies thought it expedient—if they thought about it at all before acting—to make what is called, in the slang of the day, a "kick" against the questions in the population schedule of the census relating to insanity, chronic diseases, and bodily defects. Almost the same questions were asked ten years ago by the enumerators, and were addressed to physicians, four-fifths of whom made replies. So far as any one now remembers, there was then no serious objection to the inquiry. But on this occasion the opinions of constitutional lawyers were requested by an over-enterprising journal. Mr. George Ticknor Curtis, whose name may be found affixed to many a "constitutional opinion" quite different from that of the Supreme Court, regards all "questions of scrutiny into diseases with which the persons enumerated have been afflicted," and also the inquiries relative to mortgage indebtedness, which Congress requires to be put, "as inquiries altogether outside the Constitution," etc. Mr. David Dudley Field evidently holds the same opinion, and expresses it in more sweeping terms. "The power to take the census is simply a power to enumerate the inhabitants of the country, as defined in Art. VI., Sec. 2, of the Constitution," and outside of this "the government has no right" to oblige a citizen to answer questions.

These expressions are quoted, not to argue against the view presented, but merely to exhibit the state of mind into which gentlemen of large mental grasp and high attainments, who also know as well as any one the value to social science of vital statistics, can bring themselves, when they are in a mood to fret about the Constitution. And that, indeed, is the sole purpose of this note. Until human nature is radically changed, there will always be men who will borrow little bits of trouble about what they cannot help; and until the Constitution itself is swept away, there will always be people to be afraid that it is to be broken up and carted away piecemeal.

EDWARD STANWOOD.